



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 8, 1996

Mr. Miles K. Risley
Interim City Attorney
City of Victoria
P.O. Box 1758
Victoria, Texas 77902-1758

OR96-0498

Dear Mr. Risley:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 39157.

The City of Victoria (the "city") received a request for information concerning a certain address. You assert that portions of a police supplementary offense report are excepted from required public disclosure based on section 552.101 of the Government Code in conjunction with a confidentiality provision in the Medical Practice Act, section 5.08(c) of V.T.C.S. article 4495b. You also assert that another record is excepted from required public disclosure based on section 552.101 in conjunction with two confidentiality provisions in the Health and Safety Code, sections 576.005 and 611.002.

Section 552.101 of the Government Code excepts from required public disclosure information that is confidential by law. Section 5.08 of the Medical Practice Act, V.T.C.S. article 4495b, reads in part as follows:

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician are confidential and privileged and may not be disclosed except as provided in this section.

(c) Any person who receives information from confidential communications or records as described in this section other than the persons listed in Subsection (h) of this section who are acting on the patient's behalf may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

You assert that subsection (c) applies to portions of an offense report that contain information received from a physician for purposes of the investigation. We agree that portions of the supplementary police report contain a physician's diagnosis of a patient. We believe subsection (c) prohibits the city from disclosing this information except for the authorized purpose for which the city first obtained it. A disclosure pursuant to an open records request is not such a purpose. Therefore, the city must withhold this information from disclosure pursuant to section 552.101. We have marked the document accordingly.

The document for which you raise the Health and Safety Code confidentiality provisions is a completed Involuntary Mental Health Application for Emergency Detention form. Section 576.005(a) of the Health and Safety Code provides as follows:

(a) Records of a mental health facility that directly or indirectly identify a present, former or proposed patient are confidential unless disclosure is permitted by other state law.
(Emphasis added)

By its terms, this provision is limited in its application to only the records of a mental health facility. The records here are the city's records, not those of a mental health facility. Consequently, we do not believe section 576.005(a) applies in this case.

Section 611.002(a) of the Health and Safety Code reads as follows:

Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

Section 611.001(2) of the Health and Safety Code states as follows:

"Professional" means:

- (A) a person authorized to practice medicine in any state or nation;
- (B) a person licensed or certified by this state to diagnose, evaluate, or treat any mental or emotional condition or disorder; or
- (C) a person the patient reasonably believes is authorized, licensed, or certified as provided by this subsection.

A Victoria police officer submitted the Involuntary Mental Health Application for Emergency Detention to the Citizens Hospital in Victoria. We do not believe this application is a communication between a patient and a professional. Nor is the application a record of the identity, diagnosis, evaluation, or treatment of a patient that was created or maintained by a professional. Consequently, the city may not withhold the application from disclosure based on section 552.101 in conjunction with section 611.002(a) of the Health and Safety Code.

However, we do believe the release of the application as well as the supplementary offense report implicates the common-law privacy rights of the individual who is the subject of those documents.¹ See Open Records Decision Nos. 539 (1990), 343 (1982). Therefore, the city must withhold from disclosure any information that identifies the subject of both documents.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/rho

Ref.: ID# 39157

Enclosures: Marked documents

cc: Mr. Richard M. Spellmann
113 Spokane
Victoria, Texas 77901
(w/o enclosures)

¹Since you have not informed us to the contrary, we assume that the subject of these documents is not deceased. Since a deceased person has no right of privacy, the city may not withhold information from disclosure under the common-law right to privacy if the subject of the documents is deceased. See Open Records Decision No. 432 (1985).